

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 306 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GHANCHI HABIB VALIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR TUSHAR MEHTA for Petitioner

MR ST MEHTA ADD.PUBLIC PROSECUTOR

for Respondent

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 05/09/97

ORAL JUDGEMENT

The petitioner has been convicted for the offence under Secs. 304A and other related offences in respect of an accident which occurred on 23/10/1991 at about 6-30 p.m. on Bagasara-Bilkha Road in Junagadh District. Younger son of witness Nathabhai accompanied by the said witness who were walking along road, were bringing their son Arvind, when from the back side, Arvind dashed with

the bus. According to the prosecution, the petitioner drove the bus in rash and negligent manner and knocked the boy Arvind down with fatal consequences.

2. The trial Court held him guilty for the offence under Secs.304A and other offences. The matter was carried in appeal, where findings came to be confirmed.

3. Both the courts below have considered the evidence of the witnesses, who are material witnesses in this case, they are only two in number.

4. First one is the complainant who could not be an eye witness, because he came on the scene of offence only after the accident had already occurred. No doubt, his house is situated on that very road.

5. Second witness is the father of the deceased Arvind who was accompanying him. He, therefore, is an eye witness, but except for saying that his son was knocked down by the bus, he does not throw much light on the incident.

6. On behalf of the petitioner and in his further statement under Sec. 313 of Criminal Procedure Code, a stand is taken that the boy has suddenly crossed the road, and therefore, the accident occurred. However, no such question is put to either of the witnesses in cross examination. Therefore, this is to be taken as belated attempt on his part to save himself.

7. When the witnesses are not very clear about road accident, more particularly when fatal consequences are there, serious attempts must be made to reconstruct the offence and for this purpose, a panchnama of scene of offence was drawn for valuable assistance.

8. Making use of the said evidence in the form of a Panchnama Ex.9, it is quite clear that the petitioner could not be held answerable in the manner suggested by the prosecution.

9. The Panchnama reveals that the width of the road is 19' from north to south. General direction of the road is from east to west. There is a direction in which the bus in question was progressive. Its correct side would, therefore, be southern.

10. The blood stains on account of the accident are found on 1/2 of the road, and the pool of blood is located hardly four and half feet away from the northern

ends of the road. If that is so, the bus would have come towards that side but for which the incident would not have happened.

11. So far as position of the bus is concerned, it is in slanting position lying on the road and the direction is the same, as it would be progressing on the road at the time when the accident occurred. Unfortunately, the bus in slanting position is more towards other half of the road than its correct side which is left one.

12. This would ordinarily indicate that the driver was driving the bus leaving the correct side of the road and this can be pressed into service by the prosecution as evidence of negligence.

13. However, the blood stains which are found on the bus are on the left front wheel and on the left rear wheel. This would mean that the collision had taken place with the left front wheel and this would be possible only, if the bus was taken suddenly to the right and the boy had dashed with the left front wheel of the bus.

14. This would be explained by the belated attempt on the part of the driver petitioner as his version is to the effect that the deceased suddenly crossed across the road. As a reflex action, bus was taken to the right before the boy could be saved and he was hit by left front wheel.

15. This could not be said to be either an act of rashness or negligence on his part as contemplated by the provisions of I.P.Code namely Secs. 289 and 304A of I.P.Code.

16. The location of pool of blood on the road and blood stains on the bus, as stated above, can be correlated only if the bus had moved towards right, when the deceased was suddenly found on the road by the bus driver. The fact that the bus had come to halt at a distance of 48', is also indicative that the bus was not in great speed. The bus itself has a length of almost 30' to 40'. If it had come to a halt in distance of 45', the driver was on the contrary able to halt it and stop it immediately.

16. It is, therefore, unfortunate, so far as death is concerned, as a mistake on the part of the driver rather than being criminally negligent, in my opinion. The Panchnama does not support the case of the prosecution.

17. There being no other evidence except the oral testimony as to the death which in fact was never in dispute the Panchnama, the courts below, having failed to reconstruct the sense on the basis of it, have failed to exercise their jurisdiction and this failure on their part would call for an interference by this court.

18. Accordingly, this revision is allowed. The order of conviction and sentence passed by the trial court and confirmed by the first appellate court, is set aside. The accused is acquitted of the charges levelled against him. Fine, if paid, is ordered to be refunded. Rule is made absolute accordingly. Bail bond stands cancelled.

(ccs)